

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SHANNON J. HAKEEM,

Plaintiff,

v.

No. 1:19-cv-00856-KG-JHR

NICOLE A. HERTZLER and
SUSAN MARIE MILLER,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court on Plaintiff's Complaint for a Civil Case, Doc. 1, filed September 16, 2019 ("Complaint"), and on Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed September 16, 2019.

The only factual allegations in the Complaint state:

Malicious and deliberate misuse of criminal court process that is not justified by the underlying legal action that has relentlessly continued from May 2014-present.

....

Defendants formulated a false scenario of Domestic Violence for the purpose of extortion and coerce, in May 2014. This abuse of process and outrageous misconduct has continued every year since 2014 from the defendants by filing false restraining Orders of fictitious allegations of Domestic Violence.

[sic] Complaint at 4. Plaintiff states he is seeking the following relief:

Plaintiff is requesting for the courts to make an exception to the current tort claim statute of limitations of 3 years to be able to properly show evidence of defendants misuse of process and outrageous misconduct. Actual damages include, defamation of character resulting in lost wages, mental anguish from being alienated from the children, and legal fee's.

[sic] Complaint at 5.

As the party seeking to invoke the jurisdiction of this Court, Plaintiff bears the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir.

2013) (“Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction”); *Evitt v. Durland*, 243 F.3d 388 *2 (10th Cir. 2000) (“even if the parties do not raise the question themselves, it is our duty to address the apparent lack of jurisdiction sua sponte”) (quoting *Tuck v. United Servs. Auto. Ass'n*, 859 F.2d 842, 843 (10th Cir.1988)).

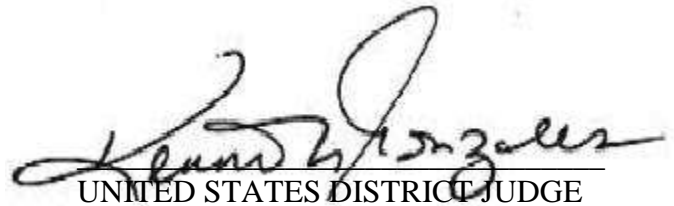
Plaintiff has not met his burden of showing that the Court has jurisdiction over this matter. Plaintiff resides in New Mexico and alleges that Defendant Hertzler also resides in New Mexico. *See* Complaint at 1-2. Consequently, there is no properly alleged diversity jurisdiction. *See Symes v. Harris*, 472 F.3d 754, 758 (10th Cir.2006) (to invoke diversity jurisdiction, “a party must show that complete diversity of citizenship exists between the adverse parties”); *Dutcher v. Matheson*, 733 F.3d 980, 987 (10th Cir. 2013) (“Complete diversity is lacking when any of the plaintiffs has the same residency as even a single defendant”). Nor is there any properly alleged federal question jurisdiction because there are no allegations that this action arises under the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States”).

The Court will dismiss the Complaint without prejudice for lack of jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir.2006) (“[D]ismissals for lack of jurisdiction should be without prejudice because the court, having determined that it lacks jurisdiction over the action, is *incapable* of reaching a disposition on the merits of the underlying claims.”).

Because it is dismissing this case, the Court denies Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs as moot.

IT IS ORDERED that:

- (i) This case is DISMISSED without prejudice.
- (ii) Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed September 16, 2019, is DENIED as moot.



Kenneth H. Gonzalez
UNITED STATES DISTRICT JUDGE